



Eden Environmental Citizen's Group, LLC

November 21, 2019

Via US Mail, Certified USPS Tracking No. 9407 1118 9956 1308 8796 88

Maria Hart
Windsor Oaks Winery
10810 Hillview Road
Healdsburg, CA 95492

Via US Mail

Robert A. Stein
Agent for service
Windsor Oaks Associates, LP
1825 Pier D Street
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Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")

To Officers, Directors, Managing Members, Operators, Property Owners and/or Facility Managers of Windsor Oaks Associates, LP and Windsor Oaks Winery:

This letter is being sent to you on behalf of Eden Environmental Citizen's Group, LLC ("EDEN") to give legal notice that EDEN intends to file a civil action against Windsor Oaks Associates, LP and its officers, managers and directors ("Discharger" or "Windsor Oaks") for violations of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the Windsor Oaks Winery facility owned by Windsor Oaks Associates, LP, located at 10810 Hillview Road in Healdsburg, California ("the Facility" or "the site").

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EDEN is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

EDEN formally registered as a limited liability company (LLC) association with the California Secretary of State on June 22, 2018; however, since at least July 1, 2014, EDEN has existed as an unincorporated environmental citizen's association with members who remain associated with EDEN as of the date of this Notice.

As discussed below, the Facility's discharges of pollutants degrade water quality and harm aquatic life in the Facility's Receiving Waters, which are waters of the United States and described in Section II.B, below. EDEN has members throughout California. Some of EDEN's members live, work, and/or recreate near the Receiving Waters and use and enjoy the Receiving Waters for surfing, kayaking, camping, fishing, boating, swimming, hiking, cycling, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study.

At least one of EDEN's current members has standing to bring suit against Windsor Oaks, as the unlawful discharge of pollutants from the Facility as alleged herein has had an adverse effect particular to him or her and has resulted in actual harm to the specific EDEN member(s).

Further, the Facility's discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of certain individual EDEN members have been, are being, and will continue to be adversely affected by the failure of Windsor Oaks to comply with the General Permit and the Clean Water Act.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

I. THE SPECIFIC STANDARD, LIMITATION OR ORDER VIOLATED

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of

California (NPDES General Permit No. CAS000001 [State Water Resources Control Board (“SWRCB”)] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ (“1997 Permit”) and by Order No. 2014-0057-DWQ (“2015 Permit”) (collectively, the “General Permit”).

Information available to EDEN, including documents obtained from California EPA’s online Storm Water Multiple Application and Reporting Tracking System (“SMARTS”), indicates that on or around October 12, 2015, Windsor Oaks submitted a Notice of Intent (“NOI”) to be authorized to discharge storm water from the Facility under the 2015 Permit. Windsor Oaks Winery’s assigned Waste Discharger Identification number (“WDID”) is 1 49I026212.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, Windsor Oaks has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377; the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

II. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Windsor Oaks Winery’s permanent facility address of 10810 Hillview Road in Healdsburg, California.

Windsor Oaks is an establishment primarily engaged in manufacturing wines, brandy, and brandy spirits. this industry also includes bonded wine cellars which are engaged in blending wines. Facility operations are covered under Standard Industrial Classification Code (SIC) 2084 - Wines, Brandy, and Brandy Spirits.

Information available to EDEN indicates that the Facility’s industrial activities and associated materials are exposed to storm water, and that each of the substances listed on the EPA’s Industrial Storm Water Fact Sheet is a potential source of pollutants at the Facility.

B. The Affected Receiving Waters

The Facility discharges into a municipal storm drain system, which then discharges to the Russian River (“Receiving Waters”).

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Late Application/Reapplication for NPDES Coverage

The CWA prohibits storm water discharges without a permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.26. The General Permit regulates operators of facilities subject to coverage under the National Pollutant Discharge Elimination System (NPDES) storm water permit, as these operators discharge storm water associated with specific industrial activities identified by both industrial activity and SIC (Standard Industrial Classification) codes in Attachment A of the Permit.

Windsor Oaks' primary industrial activity is listed on Attachment A as an industrial activity subject to NPDES coverage. Thus, the Facility was required to apply for coverage under the Permit in order to commence business operations, pursuant to Section I.Q of the Permit.

According to California Secretary of State records, Windsor Oaks Winery commenced its operations at the site on or before September 30, 2010.

Windsor Oaks did not in fact apply for coverage until October 12, 2015. Thus, between at least September 30, 2010 and October 12, 2015, the Facility operated without NDPEs Permit coverage. During that time, the Facility did not comply with any of the terms of the Permit, including implementing Best Management Practices, collecting and analyzing storm water runoff for pollution parameters, preparing and implementing a Storm Water Pollution Prevention Plan, or filing Annual Reports.

B. Deficient/Invalid SWPPP and Site Map

Windsor Oaks Winery's current Storm Water Pollution Prevention Plan ("SWPPP") and Site Map for the Facility are both inadequate and fail(s) to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows:

- (a) The Site Map does not include the minimum required components for Site Maps as indicated in Section X.E of the General Permit. Specifically, the Site Map fails to include the following:
 - 1) notes, legends, a north arrow and other data to ensure the map is clear, legible and understandable;
 - 2) the facility boundary;
 - 3) storm water drainage areas within the facility boundary and portions of any drainage area impacted by discharges from surrounding areas;

- 4) the flow direction of each drainage area;
 - 5) on-facility surface water bodies, if any;
 - 6) areas of soil erosion, if any;
 - 7) nearby water bodies such as rivers, lakes and creeks;
 - 8) locations of storm water collection and conveyance systems associated with discharge locations and direction of flow;
 - 9) locations and descriptions of structural control measures that affect industrial storm water discharges, authorized NSWDS and/or run-on, if any;
 - 10) identification of all impervious areas of the facility, including paved areas, buildings, covered storage areas or other roofed structures;
 - 11) locations where materials are directly exposed to precipitation and the locations where identified significant spills or leaks have occurred;
 - 12) all areas of industrial activity subject to the General Permit.
- (b) The SWPPP omits the **date that it was initially prepared** (Section X.A.10);
- (c) The SWPPP fails to include the **date of each SWPPP Amendment** (Section X.A.10);
- (d) The SWPPP fails to document the facility's **scheduled operating hours, including irregular operating hours (i.e. temporary, intermittent, seasonal, weather dependent)** (Section X.D.2.d);
- (e) The SWPPP fails to include an appropriate discussion of the **Industrial Materials** handled at the facility, including the locations where the materials are stored, received, shipped and handled, and the quantities and handling frequency of the Industrial Materials (Sections X.A.3, X.F, X.G.1.a);
- (f) The SWPPP fails to discuss in detail **Facility operations and all industrial processes** at the facility, including manufacturing, cleaning, maintenance, recycling, disposal, and any other activities related to each industrial process; and the type, characteristics, and approximate quantity of industrial materials used in or resulting from the process. Areas protected by containment structures and the corresponding containment capacity are also required to be identified and described. (X.G.1.a);

- (g) The SWPPP fails to include an adequate description of **Potential Pollutant Sources** and narrative assessment of all areas of industrial activity with potential industrial pollutant sources, including Industrial Processes, Material Handling and Storage Areas, Dust and Particulate Generating Activities, Significant Spills and Leaks, Non-Storm Water Discharges and Erodible Surfaces (Section X.G);
- (h) The **Advanced BMPs** as identified in the SWPPP are inadequate to comply with the Best Available Technology (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) requirements of the General Permit to reduce or prevent discharges of pollutants in the Facility’s storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability, including Exposure Minimization BMPs, Storm Water Containment and Discharge Reduction BMPs or Treatment Control BMPs (Section X.H.2);
- (i) The SWPPP fails to include a **BMP Summary Table** summarizing each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants and the BMPs being implemented (Section X.H.4 and X.H.5);
- (j) The SWPPP fails to identify all **Non-Storm Water Discharges (NSWDs)** sources and drainage areas, including an evaluation of all drains (inlets and outlets) that identifies connections to the storm water conveyance system, and a description of how all unauthorized NSWDs have been eliminated (Section X.G.e)
- (k) The SWPPP fails to include an appropriate **Monitoring Implementation Plan**, including an identification of team members assigned to conduct monitoring requirements, a description of all discharge locations, a discussion of Visual Observation procedures, justifications for alternative discharge locations, if any, procedures for field instrument calibration instructions, and an example Chain of Custody form to be used when handling and shipping water quality samples to the lab (Section X.I);
- (l) The SWPPP fails to include an adequate discussion of the **Facility’s receiving waters** (Section XI.B.6(e), Section X.G.2.ix);
- (m) The SWPPP does not contain the proper **sampling parameters** for the Facility’s SIC Code (Section XI.B.6.d, Table 1, Section XI)
- (n) The SWPPP does not contain the proper **sampling parameters** that include all potential pollutants present at the facility due to its industrial operations and industrial materials present at the facility (Section XI.B.6)

- (o) The SWPPP does not contain the proper **sampling frequency information** (Section XI.B)
- (p) The SWPPP fails to include an appropriate discussion of **drainage areas and Outfalls** from which samples must be taken during Qualified Storm Events (Section XI);
- (q) The SWPPP fails to include in the SWPPP detailed information about its **Pollution Prevention Team** (Section X.D);
- (r) The SWPPP fails to discuss the **Annual Comprehensive Facility Compliance Evaluation** (Section X.A.9).

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

C. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

1. Failure to Conduct Visual Observations

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

EDEN believes that between July 1, 2015, and the present, Windsor Oaks has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

2. Failure to Collect and Analyze the Required Number of Storm Water Samples

In addition, EDEN alleges that Windsor Oaks has failed to provide the Regional Water Board with the minimum number of annual documented results of Facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, Windsor Oaks has failed to upload into the SMARTS database system *any* storm water sample analyses for samples collected during the reporting years 2015-16, 2016-17, 2017-18 and 2018-19 to date.

EDEN notes that Windsor Oaks’ SWPPP confirms that the Facility has a detention pond it utilizes as an Advanced BMP at the site. However, the SWPPP does not indicate whether the Facility’s detention pond/storm water containment system is engineered and constructed to contain the maximum historic precipitation event, nor does the SWPPP provide specific engineering calculations with regard to the detention pond’s capacity. This omission is a violation of Section X.H.6 of the General Permit.

Furthermore, the Facility SWPPP at Section 4.2 in fact indicates that the Facility will collect storm water samples.

Thus, there is no evidence that the Facility’s detention pond results in zero storm water discharge at the Facility, such that the Facility is not required to collect and analyze storm water samples.

Further, to date, the Facility has not applied for certification under the General Permit’s “NONA” exclusion (Notice of Non-Applicability), pursuant to Section XX.C of the General Permit. To the extent that Windsor Oaks is claiming to have a “no discharge” facility, such that its Annual Report(s) indicate the Facility’s lack of sampling was attributable to no discharge occurring at the Facility, Windsor Oaks must obtain a “No Discharge Technical Report”, pursuant to Section XX.C.3 of the General Permit.

D. Late-Filed Annual Report/Failure to File Annual Reports

Windsor Oaks has failed to comply with Section XVI.A of the General Permit, which provides as follows: “The Discharger shall certify and submit via SMARTS an Annual Report no later than July 15th following each reporting year using the standardized format and checklists in SMARTS.”

Windsor Oaks’ Annual Reports for the reporting years 2017-18 and 2018-19 were due on or before July 15, 2018 and 2019, respectively. However, the Facility failed to file the Annual Reports until December 17, 2018 and November 19, 2019, respectively.

E. Deficient BMP Implementation

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices (“BMPs”) that comply with the Best Available Technology (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

EDEN alleges that Windsor Oaks has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.

Windsor Oaks Winery’s failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

F. Discharges in Violation of the General Permit

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

G. Failure to Comply with Facility SWPPP

Section 4.2 of the Facility SWPPP indicates that the Facility will collect and analyze storm water samples during rain events.

As detailed above, the Facility missed collecting storm water samples in the reporting years 2015-16, 2016-17 and 2017-18, and 2018-19.

Furthermore, Section X.H.g of the General Permit requires all Dischargers to develop and implement management procedures to ensure that appropriate staff implements all elements of the Facility's SWPPP, including the Monitoring Implementation Plan.

H. Failure to Properly Train Employees/Facility Pollution Prevention Team

Section X.D.1 of the General Permit requires each Facility to establish a Pollution Prevention Team responsible for assisting with the implementation of the requirements of the General Permit. The Facility is also required to identify alternate team members to implement the SWPPP and conduct required monitoring when the regularly assigned Pollution Prevention Team members are temporarily unavailable (due to vacation, illness, out of town business, or other absences).

Section X.H.f of the General Permit also requires that each Facility ensure that all Pollution Prevention Team members implementing the various compliance activities of the General Permit are properly trained in at least the following minimum requirements: BMP implementation, BMP effectiveness evaluations, visual observations, and monitoring activities. Further, if a Facility enters Level 1 status, appropriate team members must be trained by a QISP.

Based on the foregoing violations, it is clear that Windsor Oaks has either not properly established its Pollution Prevention Team, or has not adequately trained its Pollution Prevention Team, in violation of Sections X.D.1 and X.H.f of the General Permit.

Windsor Oaks may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entities responsible for the alleged violations are Windsor Oaks Associates, LP, as well as its officers, directors and managers, and employees of the Windsor Oaks Winery Facility responsible for compliance with the CWA.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least December 1, 2014 to the date of this Notice. EDEN may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

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EDEN has retained counsel in this matter as follows:

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To ensure proper response to this Notice, all communications should be addressed to EDEN's legal counsel, Mr. Paul Warner.

VII. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. **These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.**

In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d) and California Code of Civil Procedure §1021.5, EDEN will seek to recover its pre and post-litigation costs, including all attorneys' and experts' fees and costs incurred (see *Southern California Alliance of Publicly Owned Treatment Works v. U.S. Environmental Protection Agency* (9th Cir. 2017) 853 F.3d 1076; *Vasquez v. State of California* (2008) 45 Cal.4th 243).

VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages Windsor Oaks Winery's counsel to contact **EDEN's counsel** within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein. Please do not contact EDEN directly.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if Windsor Oaks Winery wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



AIDEN SANCHEZ
Eden Environmental Citizen's Group

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